

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE:

B-164031(5).22

DATE:

MAR 14 1979

MATTER OF:

Norton Sound Health Corporation

**DIGEST:**

Norton Sound Health Corporation annually has entered into contracts with Indian Health Service, HEW, to provide health care services during that fiscal year and desires to carryover into the succeeding fiscal year any unexpended funds to provide for medical services it will render in that year. Although provisions of 25 U.S.C. § 13a (1976) make the funds available for two years, this authority has been overridden annually by provision in appropriation acts restricting use of funds to current fiscal year unless specifically provided otherwise in the appropriation act involved. Appropriations made to Indian Health Service for fiscal year 1978 contain no such specific provision and funds lapse at end of that year. Appropriation act for fiscal year 1979 makes IHS funds appropriated therein available until the end of fiscal year 1980.

The Norton Sound Health Corporation (NSHC) requests our views on three questions concerning the carryover of funds not obligated under an Indian Health Service (IHS) contract.

The Corporation's Executive Director states that, "Most recently there has been some confusion" within DHEW [the Department of Health, Education and Welfare] and IHS as to whether such carryover is possible within existing law and regulations." We are asked to resolve the "confusion". As explained in more detail below, only when the applicable appropriations act permits funds to remain available for an additional fiscal year is the carryover of contract funds for health services authorized.

Utilizing funds from the Office of Economic Opportunity, the NSHC was established in 1970 as a private corporation under the laws of the State of Alaska. Starting in 1974, the Alaska Area Native Health Service, a component of the Indian Health Service, Department of Health, Education, and Welfare, began contracting with NSHC,

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initially for the provision of physician's services. According to NSHC's Executive Director,

"That contract has now been expanded to 2 contracts which together encompass responsibility for an entire comprehensive regional health delivery system. The contract vehicle was and is cost-reimbursement type for health service programs."

The Executive Director notes that both the authorizing legislation and the applicable regulations appear to provide some authority for carrying over unexpended fiscal year funds. He notes that there is a continuous growth in complexity in providing health services and that while the program needs of NSHC are never ending, the contracts with HEW are funded on a fiscal year basis. He states that the inability to carry funds over lessens the flexibility of response to normal peaks and valleys in demand for services and otherwise hampers the corporation.

His first question is: "With the above cited Public Health Service Regulations [42 CFR 36.236(e)] being based on Public Law 93-638, can the Indian Health Service Contracting Officer allow carryover of the appropriations for ongoing health services?"

Since the Indian Health Service is administered by HEW, we requested the reviews of the Secretary on this matter. Those views were provided to us in a letter from an Assistant General Counsel. He suggests in his letter that funds under these contracts may be carried over from one year to the next in the event of a cost underrun in a contract which is expected to be renewed from year to year and calls for the performance of services of a continuous nature. He states that it is a practice, not only by the Indian Health Service but of other HEW units, to permit funds obligated by "continuing-type" contracts which were made in one fiscal year but which remain unexpended at the expiration of the contract to be used in performing services in the succeeding fiscal year under the follow-on or renewal contract. HEW's rationale, as stated in the letter, is as follows:

"The Comptroller General has long held that a contract obligates the appropriations of the fiscal year in which it is executed provided that it meets a bona fide need of that fiscal year. 33 Comp. Gen. 57, 61 (1953), and the decisions cited therein. Where the work under a contract is of a continuing nature, the expiration of the term of the contract does not necessarily mean that any further work to be performed may not be regarded as meeting the needs

which prompted the initial contract. If there is a cost contract underrun at the expiration of the initial contract, the period of the contract can be extended to permit the contractor to expend the balance of the estimated cost of the contract. At the conclusion of this period of extension, the Government can enter into a follow-on contract, obligating funds of the then current fiscal year. However by executing a follow-on contract immediately upon the expiration of the initial contract and by authorizing the contractor to continue to use the prior fiscal year's appropriations which had not been completely expended, we would obviate the need for executing two separate contracts, viz., a short-term extension contract and a new follow-on contract. Since there would be no legal objection to executing a short-term extension contract to permit the utilization of the unexpended balance of the initial contract and then executing a follow-on contract which would obligate the funds of the then current fiscal year, there would also be no legal objection to telescoping the process by executing a single follow-on contract under which the contractor would be authorized to utilize both the unexpended balance of the original contract as well as the additional funds obligated by the follow-on contract."

The subject contracts involve, as we understand it, the provision of the services of physicians and other medical services, during a fiscal year to a discrete group of eligible individuals. With respect to the particular questions raised by NSHC, for the reasons discussed below, we disagree with HEW's position. It is our view that whether these funds remain available for the provision of health services in a succeeding fiscal year depends entirely upon the language used in the appropriations act.

The basic rule on availability of appropriations is that unless otherwise provided by law, appropriations made for a specific fiscal year lapse at the end of that year and may not be obligated for expenditure in the succeeding fiscal year. See 31 U.S.C. § 712a (1976).

If section 8 of the Indian Self-Determination and Education Assistance Act, Public Law 93-638, January 4, 1975, 88 Stat. 2206, 25 U.S.C. § 13a (1976) stood alone, it would overcome this general statutory restriction on the availability of appropriations. 25 U.S.C. § 13a provides:

"The provisions of any other laws to the contrary notwithstanding, any funds appropriated pursuant to sections

13 and 52a of this title, for any fiscal year which are not obligated and expended prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure during such succeeding fiscal year."

However, the provisions of 25 U.S.C. § 13a authorizing the carryover of unobligated and unexpended appropriation has been regularly overridden by a provision which has appeared for many years in annual appropriation acts. That provision states: "No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein." (Emphasis supplied.) See, for example, section 305 of Public Law 95-74, July 26, 1977, 91 Stat. 285, 405, known as the Department of the Interior and Related Agencies Appropriation Act, 1978. This provision controls as it is the latest expression of congressional intent on the availability of the appropriation. Where the Congress wanted to overcome this provision, it specifically did so.

With respect to fiscal year 1978, we note that many of the funds appropriated (by Public Law 95-74, *supra.*), to the Department of the Interior under the heading of "Indians Affairs, Bureau of Indian Affairs, Operation of Indian Programs," 91 Stat. 292-293, are specifically made available in the Appropriation Act beyond the end of fiscal year 1978. However, in the same act, at 91 Stat. 300-301, appropriations to the Indian Health Service, HEW, do not provide for such a carryover. Accordingly, under the 1978 appropriation act, funds which were not used to provide medical services during fiscal year 1978 may not be used to pay for health care services provided in fiscal year 1979.

The appropriation of the Indian Health Service for fiscal year 1979, contained in the Department of the Interior and Related Agencies Appropriation Act, 1979, Pub. L. No. 95-465, October 17, 1978, 92 Stat. 1296, includes a proviso that funds made available to tribes and tribal organizations through contracts authorized by the Indian Self-Determination and Education Assistance Act of 1975 shall remain available until September 30, 1980. This specific provision satisfies the requirement of the appropriations limitation mentioned above and allows the funds appropriated for fiscal year 1979 to be used throughout the end of fiscal year 1980. As with the 1978 act, this specific provision would be unnecessary if the Congress did not believe that the appropriation act provision would be controlling.

The Executive Director's second question is: "Would the appropriations act require changes in wording to allow carryover of funds to subsequent years' programs?"

As just noted, if the Congress enacts language such as that contained in 1979 appropriation act, no change will be necessary.

The Executive Director's final question is: "Would a change in the term period of performance under a cost-reimbursement contract, i.e., performance start up from March 1 to contract completion February 28 allow carryover? Or would this require six (6) months of funding from each of the fiscal year funds involved?"

Obviously, when there is a provision such as that in the fiscal year 1979 appropriation act, a contract from March 1 to February 28 would be authorized. Should the appropriation act, such as the 1978 fiscal year appropriation act, fail to allow for a carryover from one fiscal year to another, a contract for health services entered into on March 1 would have to terminate by September 30, the end of the fiscal year, and a new contract, funded from the next fiscal year's funds, would have to be entered into for the succeeding 6 month period.

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